***State of New Jersey***
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. ADC 8445-13

AGENCY DKT. NO. SADC ID# 1342

**EDWARD AND LINDA FEINBERG,**

Petitioners,

v.

**HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD; AND ANN DEL CAMPO AND LAURA DEL CAMPO C/O STONYBROOK MEADOWS, LLC,**

Respondent.

---

**Edward and Linda Feinberg**, petitioners, pro se

**Ann del Campo and Laura del Campo**, appearing pursuant to N.J.A.C. 1:1-5.4(a) for Stonybrook Meadows, LLC, respondent

**Shana L. Taylor**, Esq., for Hunterdon County Agriculture Development Board, respondent

Record Closed: May 30, 2013 Decided: June 19, 2013

BEFORE **EDWARD J. DELANOY, JR**., ALJ:

## STATEMENT OF THE CASE

This matter arises from respondent Hunterdon County Agriculture Development Board's (HCADB) resolution to approve in part respondent Ann del Campo's application for recommendations for site specific agricultural management practices (SSAMPs) on her farm, Stonybrook Meadows, under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4. Petitioners Linda and Edward Feinberg (hereinafter the Feinbergs), who own property adjacent to the farm, appeal from the HCADB's decision. The Feinbergs have filed a motion for summary decision requesting a finding that the HCADB did not have jurisdiction to hear Ms. del Campo's application for SSAMP recommendations because Stonybrook Meadows did not meet the commercial farm eligibility requirements under the Right to Farm Act.

## PROCEDURAL HISTORY

On April 20, 2012, the Feinbergs filed with the State Agricultural Development Committee (SADC) an appeal of the HCADB's decision to exercise jurisdiction over Ms. del Campo's application and to approve several of her SSAMP requests.[1] The matter was transmitted by the SADC, and on June 18, 2012, was filed at the Office of Administrative Law (hereinafter OAL) as a contested case. On November 12, 2012, the Feinbergs filed a motion for summary decision, seeking a finding that the HCADB did not have jurisdiction under the Right to Farm Act to hear Ms. del Campo's requests for SSAMP recommendations, because Stonybrook Meadows did not meet the income requirements under the Right to Farm Act in 2011; Stonybrook Meadows has not been located in an area in which agriculture is a permitted use at any point after December 31, 1997, and agricultural use on Stonybrook Meadows is inconsistent with the master plan of East Amwell Township; and because Stonybrook Meadows was not a commercial farm as of July 2, 1998. The Feinbergs further argue that the HCADB did not have jurisdiction because Ms. del Campo provided inadequate notice of the November 10, 2011, hearing before the HCADB.

[1] Note that the Feinbergs filed an appeal before the HCADB issued its resolution.

On or about December 19, 2012, a responding brief was received from Ms. del Campo, and on or about December 26, 2012, a responding brief was received from the County of Hunterdon. On January 2, 2013, a reply brief was received from the Feinbergs, and on January 8, 2013, a reply brief was received from Ms. del Campo. This tribunal subsequently requested additional income information from Ms. del Campo, and the parties responded to that request. On April 8, 2013, this tribunal requested additional information regarding Ms. del Campo's receipt, if any, of conditional use approval from East Amwell Township, at the time of Ms. del Campo's September 14, 2011, application to the HCADB. The parties responded to that request, with the final response by the Feinbergs being received on May 30, 2013. On that date the record closed.

## FACTUAL DISCUSSION

In 1997, Ms. del Campo bought Stonybrook Meadows, a nineteen-and-a-half acre parcel situated on Block 41, Lot 40.05, East Amwell Township, Hunterdon County.[2] At the time of the purchase, the farm was located in the Stony Brook District, a township zoning district in which agricultural uses and farms were conditional uses. (Ex. 15.)[3] In December 2003, the Stony Brook District became part of the Sourland Mountain District. While agricultural uses and farms are also conditional uses in the Sourland Mountain District, the East Amwell Township Zoning Ordinance provides that "[a] farm having farmland assessment as of December 11, 2003, and consisting of cropland harvested and/or cropland pastured and/or permanent pasture as documented on a properly filed FA-I farmland assessment application, need not apply for conditional use approval, provided such use does not involve any additional clearing and does not exceed the maximum lot coverage as permitted according to § 92-89F." 92-89(D)(4)(b), (Ex. 16) (§ 92-89(D)(4)(b)). According to the East Amwell Township Master Plan adopted on November 30, 2005, "[d]ue to the natural limitations of [the Sourland Mountain District] and a desire to promote a sustainable human and wildlife habitat,

[2] The farm is located in East Amwell Township, but the mailbox for the property is located at 82 Stonybrook Road, Hopewell, NJ 08025. The total land devoted to agricultural use is eighteen acres. (Ex. E.)

[3] The Feinbergs' exhibits are numbered; Ms. del Campo's exhibits are lettered.

minimum design standards and criteria are intended to protect natural and cultural resources and preserve the rural character of the Sourland Mountain." (Ex. 17.)

In 1998, the year after she bought Stonybrook Meadows, del Campo sought farmland assessment. However, East Amwell Township required proof that Stonybrook Meadows was devoted to agricultural or horticultural use for three years, and thus Stonybrook Meadows did not receive farmland assessment until 2001. See del Campo Brief, December 19, 2012, p. 3; (Ex. E). Since then, East Amwell Township has annually approved Stonybrook Meadows for farmland assessment. (Ex. E.)

For several years, the use of the farm was limited to equine activities. See del Campo Brief, December 19, 2012, pp. 2-4. Ms. del Campo bred, raised, and sold horses. Ibid. She also offered boarding services and horse riding lessons. Ibid. In 2005, Ms. del Campo sought to expand her equine operation. Ibid. However, on June 8, 2005, an East Amwell Township zoning officer issued a letter denying Ms. del Campo's proposal for expanding an indoor horse riding arena and run-in sheds for horses. (Ex. 31.) On June 16, 2005, Ms. del Campo appealed the denial to the East Amwell Township Zoning Board of Adjustment. (Ex. 32.) However, Ms. del Campo subsequently withdrew her appeal and instead, on September 15, 2005, applied to the HCADB for an SSAMP recommendation for the run-in sheds.

On November 10, 2005, Joan McGee, the East Amwell Township Planning Board Administrator, submitted to the HCADB a letter expressing the township's concerns with Ms. del Campo's application. (Ex. 33); (Ex. 35). In the letter, Ms. McGee explained that Stonybrook Meadows is located in the township's Sourland Mountain district (Sourland Mountain), which is "largely wooded [and] very environmentally sensitive, [and] has significant areas of wetlands, very poor groundwater recharge, and poor yields from underlying aquifers." Ibid. Ms. McGee stated that "[a]griculture is a conditional use [in the district,] with the one condition that there be no clearing of any trees for fields or pastures, because of the importance of retaining the forest canopy." Ibid. According to Ms. McGee, the township adopted an ordinance amendment with respect to the Sourland Mountain in September 2004 that "grandfathered existing farms, so the conditional use approval is not an issue, as there will be no clearing of trees as

part of [Ms. del Campo's] application." Ibid. However, Ms. McGee noted that the township's concerns with Ms. del Campo's application included impervious coverage, water usage, wetlands areas and drainage, and manure disposal. Ibid.

On December 8, 2005, the HCADB approved Ms. del Campo's application. (Ex. 35.) The board declared Stonybrook Meadows a commercial farm entitled to protection under the Right to Farm Act and determined that the installation of run-in sheds constitutes an acceptable agricultural management practice. Ibid.

In 2011, Ms. del Campo sought to further expand the activities on her farm. She applied to East Amwell Township for zoning approval for a farm stand, but, on August 10, 2011, the township denied her application due to "non-permitted commercial use of property beyond that encompassed by the Right-to-Farm Law" and "failure to conform to 'Farm Stand' application standards." (Ex. 36.)

Ms. del Campo did not appeal that decision and instead, on September 14, 2011, she applied to the HCADB for SSAMP recommendations. (Ex. 8.) Ms. del Campo certified that her farm, Stonybrook Meadows, "is five acres or more, produces agricultural and/or horticultural products worth $2,500 or more annually, and is eligible for differential property taxation pursuant to the Farmland Assessment Act." Ibid. Ms. del Campo also certified that Stonybrook Meadows "is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan." Ibid. By her application, Ms. del Campo sought approval for the following activities:

> (1) performance of equine activities, including horsemanship classes, horse auctions, equestrian birthday parties, and Iyengar Yoga classes for equestrians and farmers; (2) marketing of agriculture products, including farm tastings; (3) performance of educational forums and events pertaining to certain products which are produced on the farm; (4) breeding and selling of horses, swine, lambs and other farm animals, and the production of other specialty products on the farm; (5) increasing the size of the farm infrastructure, including an increase in the size of the existing structures, specifically the expansion of the existing farm market from

> 250 sq. ft. to 900 sq. ft., and permission to circumvent the requirement of obtaining the Minor Site Plan Approval from East Amwell Township; (6) erection of hoop style greenhouses on the farm, which would be covered for part of the year, to allow for a longer growing season and increase of agricultural output; (7) erection of a prep-clean room on the farm which would be subject to approval by the Hunterdon County Health Department. This prep-clean room would be used for the packaging and final baking of herbs, bread and other farm products as well as for demonstrations related to canning, jellies and pickling; (8) increasing the number of parking spaces by approximately 9 spaces (farm currently has ten (10) existing spaces; and (9) erecting signs on the property's flag lot stem pertaining to the farm market and vehicular traffic guidelines for use of a common driveway.
>
> [Ex. 1A.]

On October 13, 2011, the HCADB held a hearing to determine if Stonybrook Meadows qualified as a commercial farm.[4] At the hearing, Ms. del Campo presented several documents purporting to reflect income from the sale of agricultural products. Those documents included a Schedule F for the tax years 2004 to 2010; seven invoices reflecting the sale of agricultural products in the amount of $1,105.45 between September 12, 2011, and October 12, 2011; and a bank statement for the period from March 14, 2011, to October 5, 2011, showing deposits made in an account for Stonybrook Meadows, LLC. (Exs. 9, 10, 11.) Ms. del Campo said she "passed around" those documents for the HCADB to view. See del Campo Brief, December 19, 2012, pp. 6-7. Ms. del Campo admitted that she did not meet the income requirements in 2010. (Ex. 12, pp. 6-7.) The HCADB asked Ms. del Campo for a Schedule F for 2011 and her most recent farmland assessment form. Id. at p. 10. The HCADB voted to certify Stonybrook Meadows as a commercial farm pending the board's receipt of those documents. Id. at p. 12. The board scheduled a hearing on Ms. del Campo's application for November 10, 2011.

According to the HCADB's rules, if a public hearing on an SSAMP request is scheduled, "[t]he applicant must serve public notice to landowners within 200 feet of the boundaries of the farm, the municipality, municipal planning board, and all parties

[4] The transcript is dated October 6, 2011.

involved in the application at least 10 days prior to the hearing." (Ex. 50.) The HCADB's rules also state that "[p]roof of notification will be required prior to hearing." Ibid.

On October 27, 2011, Ms. del Campo first placed a notice of the November 10, 2011, hearing in the Hunterdon County Democrat, a local newspaper, and on October 31, 2011, she notified by certified mail her neighbors within 200 feet, Comcast, Jersey Central Power & Light, PSE&G, the Hunterdon County Planning Board, and the New Jersey Department of Transportation. See del Campo Brief, February 2, 2013.

At the November 10, 2011, hearing, the chairman of the HCADB stated that "I just want to say the last time we left the farm certification pending, provid[ed] they bring in a statement and their farmland assessment forms. Have they been submitted yet?" (Ex. 14, p. 15.) In response, the CADB administrator stated, "Yes, it is a certified farm." Ibid. A board member then stated, "As long as they got the thing, that is it." Ibid.

On May 9, 2011, after several public hearings on Ms. del Campo's application, the HCADB issued a resolution approving all of Ms. del Campo's requests for SSAMPs, with the exception of her request to increase the size of existing buildings on the farm without the approval of East Amwell Township. (Ex. 1A.) On the issue of commercial farm certification, the HCADB stated in its resolution that:

> In 2005, the CADB certified Stonybrook Meadows as a commercial farm in connection with a Right to Farm application submitted at that time. In 2011, upon receipt of Ms. del Campo's SSAMP application on behalf of Stonybrook Meadows, the Board made the same determination prior to scheduling a public hearing on this matter. Ms. del Campo testified and furnished proofs that her operation met the required economic standard . . . She provided documentation regarding her farming income and farmland tax assessment for 2011, her application for 2012, as well as several additional years of proof of income. The CADB properly certified the property as a commercial farm on October 13, 2011, before it scheduled a public hearing on the SSAMP application.[5]

[5] The exhibit list included in the first resolution does not include any documents regarding income.

[Ex. 12.]

As to the jurisdictional issue, the HCADB stated in its resolution that:

The CADB determined that jurisdiction was properly vested in the CADB based on the following analysis. Stonybrook Meadows farm qualified to receive Right to Farm protection because the farm meets at least one of three criteria set forth in N.J.S.A. 4:1C-9, which requires:

> 1. The commercial farm to be located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan; or,
>
> 2. The commercial farm to be in operation as of the effective date of July 3, 1998, and the operation conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the Administrative Procedures Act; or,
>
> 3. The commercial farm, whose specific operation or practice, has been determined by the appropriate county board to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety.

The CADB certified this farm as a commercial farm on two separate occasions. The third criterion of N.J.S.A. 4:1C-9 is applicable to the situation at issue with Stonybrook Meadows. This criterion set forth above cites no specific effective zoning date, nor whether agriculture must be a "permitted use". This third criterion is a mechanism for affording farms Right to Farm protection for those commercial farms which fall outside the first two criteria.

In addition, upon examination of the relevant Municipal Land Use Law, the New Jersey Legislature defined a conditional use as "a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the

zoning ordinance, and upon the issuance of an authorization therefore by the planning board." N.J.S.A. 40:55D-3.

A conditional use is, on its face, a permitted use, so long as the conditions are clearly set forth in the zoning ordinance. In this matter, proof has not been provided to the Board to demonstrate that Stonybrook Meadows received written conditional use approval/authorization from East Amwell Township. However, in the absence of a written determination granting such conditional use approval, Ms. del Campo testified that Stonybrook Meadows has, over the years, received multiple permits from the Township on separate occasions for her agriculture and farm related activities on the farm, including permits for her greenhouse. Therefore, the Board has concluded that municipal approval was impliedly granted based on the municipality's repeated practice of issuing permits for her farming operation. In addition, the Township has raised no objection to this application.

Throughout the proceedings before the HCADB, the Feinbergs objected to the exercise of jurisdiction by the HCADB.

## LEGAL ANALYSIS

N.J.A.C. 1:1-12.5, governing motions for summary decision, permits early disposition of a case before the case is heard if, based on the papers and discovery which have been filed, it can be decided "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). The provisions of N.J.A.C. 1:1-12.5 mirror the language of R. 4:46-2 of the New Jersey Court Rules governing motions for summary judgment. An adverse party does not bear an obligation to oppose the motion, but to survive summary decision, there must be "a genuine issue which can only be determined in an evidentiary proceeding." Ibid. The non-existence of one entitles the moving party to summary decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). Moreover, even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is "so one-sided that [the moving party] must prevail as a matter of law." Id. at 536. "Applying this standard, the ALJ must

determine whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." 1106 Ocean Ave. v. Governing Body of Point Pleasant Beach, ABC 4355-02, initial decision, (October 25, 2004) (citing Contini v. Newark Bd. of Educ., 286 N.J. Super. 106, 122 (App. Div. 1995)). I am therefore required to do "the same type of evaluation, analysis or sifting of evidential materials as required by Rule 4:37-2(b) in light of the burden of persuasion that applies if the matter goes to trial." Brill, supra, 142 N.J. at 539-40. Like the New Jersey Supreme Court's standard for summary judgment, the language for summary decision is designed to "liberalize the standards so as to permit summary [decision] in a larger number of cases" due to the perception that we live in "a time of great increase in litigation and one in which many meritless cases are filed." Id. at 539 (citation omitted).

The Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4 (RTFA), and the regulations promulgated thereunder, N.J.A.C. 2:76-2.1 to -2B.3, are designed to protect "commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey." N.J.S.A. 4:1C-2(e). The RTFA "renders its provisions preeminent to 'any municipal or county ordinance, resolution, or regulation to the contrary'" and its "provisions [are] preeminent over a municipality under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -112." Bor. of Closter v. Abram Demaree Homestead, Inc., 365 N.J. Super. 338, 347 (App. Div. 2004), certif. denied, 179 N.J. 372 (2004) (citing N.J.S.A. 4:1C-9; Twp. of Franklin v. Den Hollander, 172 N.J. 147 (2002)). However, the protections of the RTFA extend only to an agricultural operation that qualifies as a "commercial farm." In re Tavalario, 386 N.J. Super. 435, 441 (App. Div. 2006).

Under the RTFA, a "commercial farm" is "a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the

'Farmland Assessment Act of 1964,' P.L. 1964, c. 48 (C. 54:4-23.1, et seq.)."[6] N.J.S.A. 4:1C-3; N.J.A.C. 2:76-2.1. The RTFA "does not require an applicant to apply for and obtain farmland assessment, but only that he meets the eligibility criteria for farmland assessment." In re Arno, ADC 4748-03, Final Decision (February 26, 2004), <http://njlaw.rutgers.edu/collections/oal/>.

Under the RTFA, a commercial farm operator "may make a request in writing to the [county agriculture development] board [CADB] to determine if his or her operation constitutes a generally accepted agricultural operation or practice" that is protected by the RTFA from nuisance action. N.J.A.C. 2:76-2.3(a); N.J.S.A. 4:1C-9. This is known as a request for a recommendation of a site specific agricultural management practice [SSAMP.][7]

Under this procedure, the CADB requests information about the commercial farm from the owner, including "[p]roof that the commercial farm is no less than five acres, produces agricultural/horticultural products worth $2,500 or more annually, listing said products, and is eligible for differential property taxation pursuant to the Farmland Assessment Act of 1964" and "[p]roof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998." N.J.A.C. 2:76-2.3(b); N.J.S.A. 4:1C-9. The CADB cannot hear the owner's application for a site specific agricultural

[6] Under the FAA, land must meet certain requirements to be eligible for differential property taxation (farmland assessment): (1) land must be actively devoted to agricultural or horticultural use, which includes a requirement of gross sales of agricultural or horticultural products in the amount of $500.00; (2) land must be devoted to such use for at least two successive years; and, (3) the area of the land must not be less than five acres. N.J.S.A. 54:4-23.5 and -23.6; N.J.A.C. 18:15-3.1 to -3.7.

[7] As the SADC explained in Bailey v. Hunterdon Cnty. Agric. Dev. Bd., ADC 2759-09, Final Decision (December 9, 2010),

> The regulations provide that a CADB-approved SSAMP is 'recommended' to the SADC [State Agricultural Development Committee], but 'recommended' has never been construed by the agency as vesting final decision-making authority with the SADC in the absence of an appeal. Instead, the agency considers a recommended SSAMP to be a CADB's formal expression of support for a particular farming practice.
>
> [Id. at p. 31.]

management practice recommendation unless the farm meets these threshold requirements. N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.3; In re Arno, supra.

Upon making a decision, the CADB forwards its determination to the farm owner, the State Agriculture Development Committee (SADC), and any other appropriate party. N.J.A.C. 2:76-2.3(e). Any person aggrieved by the CADB's determination may file an appeal with the SADC in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15 (APA). N.J.S.A. 4:1C-10.2; N.J.A.C. 2:76-2.3(f). Thus, if the SADC determines that the appeal constitutes a contested case, the committee may transmit the matter to the Office of Administrative Law for a hearing. N.J.S.A. 52:14B-2; N.J.A.C. 1:1-2.1. After conducting a de novo hearing, the Administrative Law Judge (ALJ) assigned to the matter shall issue an initial decision that includes his recommended findings of fact and conclusions of law. N.J.S.A. 52:14B-10(c). The initial decision is filed with the SADC, which may adopt, modify, or reject the initial decision and whose decision shall be considered a final administrative agency decision. N.J.A.C. 2:76-2.3(f); N.J.S.A. 4:1C-10.2; N.J.S.A. 52:14B-10(c).

## I. Stonybrook Meadows is a commercial farm.

### a) There is proof that Stonybrook Meadows produced at least $2,500 in agricultural products in the year prior to the HCADB's assumption of jurisdiction.[8]

An applicant for commercial farm designation under the RTFA must offer "clear evidence of actual or future receipt of income from agricultural production" in an annual amount of $2,500. Tavalario, supra, 386 N.J. Super. at 445. A reasonable interpretation of the $2,500 sales figure is that it "encompass[es] agricultural production, not service or other activities, and [is further limited] to agricultural production that is commercial in nature." Tavalario, supra, 386 N.J. Super. at 444.

There are few published cases that offer insight into what constitutes "clear evidence" of income from agricultural production. In Hertz, supra, the SADC found that an applicant did not meet the definition of a commercial farm because she failed to offer

[8] The parties do not dispute that Stonybrook Meadows meets the five acre requirement of a commercial farm.

clear evidence of $2,500 in annual income from agricultural production. According to the SADC, "in determining whether a farmer meets the production requirements of the Act, it is reasonable to examine the tax year immediately prior to the year in which the right-to-farm matter was filed." Id. at 5. In Hertz, the applicant submitted a federal income tax Form 1040 (Schedule C-EZ), "her farmland assessment form, a series of receipts for business expenses, and a handwritten accounting of sales of honey and community-supported agriculture (CSA) shares." Ibid.

The SADC noted that Schedule F, not Schedule C, is the federal tax form for reporting profit or loss from farming. Id. at 6. As the SADC explained, "[a]lthough federal tax forms can be used to support a landowner's claim that he or she meets the production requirements of the Act, they may not be sufficient without additional documentation" but, "if a farmer in a right-to-farm matter has not filed a Schedule F, he or she must produce contemporaneous evidence to show that his or her income is indeed from the sale of agricultural or horticultural products." Ibid.

In Hertz, the applicant failed to produce a Schedule F, and failed to offer other sufficient evidence of adequate income. First, the farmland assessment form submitted by the applicant was insufficient because it only showed how many acres of the farm were devoted to agricultural or horticultural use. Id. at 7. According to the SADC, such a form would not necessarily offer proof of adequate income under the RTFA, because the income requirement for farmland assessment is only $500. Ibid. And, while some farmland assessment forms include an addendum for additional information about income, the applicant in Hertz had not provided proof of such an addendum that may have shown income satisfying the requirements of the RTFA. Ibid.

Second, "[t]he business expenditure receipts clearly show[ed] that Ms. Hertz purchased beekeeping-related products such as bees, jars, a helmet, and other products," but the invoices did not "establish sales of any agricultural products." Ibid. Finally, the SADC found that "[t]he handwritten notes stating her income from honey and CSA shares are not sufficient to establish the sales of such products," but that "copies of contracts or receipts could have sufficiently corroborated the income listed on

her tax forms." Ibid. As such, the SADC declared that the applicant had failed to offer sufficient proof that she met the $2,500 income requirement of the RTFA.

In Tavalario, the SADC also found that an applicant failed to offer clear evidence of adequate income from agricultural products. In that case, the applicant, who operated a horse farm, submitted farmland assessment and federal income tax forms that reflected annual income of less than $2,500. In addition, the SADC set forth the equine activities that count toward meeting the income requirement and announced the general rule that "the unrealized value of a horse can be used to satisfy the Act's production requirements only if the farmer has an existing written contract to sell the horse for a specified amount of money within a specified period of time," but found that in the matter before them, "the record does not contain contracts for sales of horses that would qualify as anticipated income." Id. at 8-9. Since the applicant could not show adequate income, the SADC concluded that he was not entitled to the protections of the RTFA.

Here, unlike in Hertz and Tavalario, there is clear evidence that Stonybrook Meadows produced over $2,500 in agricultural products in 2011. While it is not entirely clear what the HCADB considered when certifying Stonybrook Meadows as a commercial farm, it is clear that Stonybrook Meadows was producing $2,500 in agricultural products when the HCADB assumed jurisdiction over Ms. del Campo's SSAMP application on November 10, 2011.

At the hearing before the HCADB on October 13, 2011, Ms. del Campo presented several documents purporting to reflect income from the sale of agricultural products.[9] Those documents were a Schedule F for the tax years 2004 to 2010; seven invoices reflecting the sale of agricultural products in the amount of $1,105.45 between September 12, 2011, and October 12, 2011; and a bank statement for the period from March 14, 2011, to October 5, 2011, showing deposits made in an account for Stonybrook Meadows, LLC. (Exs. 9, 10, 11.) Ms. del Campo said she "passed around" those documents for the HCADB to view. See del Campo Brief, December 19, 2012, pp. 6-7. Ms. del Campo admitted that she did not meet the income requirements in

[9] Again, the transcript is dated October 6, 2011.

2010. (Ex. 12, pp. 6-7.) The HCADB asked Ms. del Campo for a Schedule F for 2011 and her most recent farmland assessment form. Id. at p. 10. The HCADB voted to certify Stonybrook Meadows as a commercial farm pending the board's receipt of those documents. Id. at p. 12. The board scheduled a hearing on Ms. del Campo's application for November 10, 2011.

On November 10, 2011, the chairman of the HCADB stated that "I just want to say the last time we left the farm certification pending, providing they bring in a statement and their farmland assessment forms. Have they been submitted yet?" (Ex. 14, p. 15.) In response, the CADB administrator stated, "Yes, it is a certified farm." Ibid. A board member then stated, "As long as they got the thing, that is it." Ibid. In its resolution approving several SSAMPs, the HCADB stated that

> In 2005, the CADB certified Stonybrook Meadows as a commercial farm in connection with a Right to Farm application submitted at that time. In 2011, upon receipt of Ms. del Campo's SSAMP application on behalf of Stonybrook Meadows, the Board made the same determination prior to scheduling a public hearing on this matter. Ms. del Campo testified and furnished proofs that her operation met the required economic standard . . . She provided documentation regarding her farming income and farmland tax assessment for 2011, her application for 2012, as well as several additional years of proof of income. The CADB properly certified the property as a commercial farm on October 13, 2011, before it scheduled a public hearing on the SSAMP application.
>
> [Ex. 12.]

Since hearings before the OAL in RTFA matters are de novo, Ms. del Campo was allowed to provide additional contemporaneous evidence to show that she met the income requirement by the time the HCADB assumed jurisdiction.[10] While some of the evidence submitted to the OAL by Ms. del Campo is inconclusive, she has submitted other documents that clearly prove that she satisfied the income requirement.

[10] See Hertz, supra, Final Decision, p. 8 (finding that "Ms. Hertz was presented with a new opportunity to present evidence at the hearing before ALJ Karaszegi, but failed to produce adequate proof that she meets the production requirements of the Act.")

**Income Documentation**

(1) 2011 Schedule F (Ex. G)

The 2011 Schedule F for Stonybrook Meadows shows a profit of $14,757. However, the portion of that form submitted by Ms. del Campo does not provide a breakdown of how that profit was generated. Thus, it is unclear what amount of the profit represented sales of agricultural or horticultural products.

(2) Bank Deposits

At the October 13, 2011, hearing before the HCADB, Ms. del Campo presented a bank statement for Stonybrook Meadows from March 14, 2011, to October 5, 2011. The deposits from that period far exceed $2,500. However, it is unclear from the statement the extent to which the deposits represent sales of agricultural products.

On January 15, 2013, Ms. del Campo provided bank deposit slips in response to an OAL request for further proof of income in 2011. The slips are from June 13, 2011, to December 15, 2011. However, it is difficult to discern which of the timely slips match with relevant invoices and it appears that Ms. del Campo handwrote the products represented by each slip contemporaneously with the January 15, 2013, submission. That is, the handwritten notes are not on the deposit slips, but in the margins of copies of the deposit slips.

Similarly, on February 2, 2013, in response to another OAL request for further proof of income, Ms. del Campo submitted numerous deposit slips from January 18, 2011, to August 30, 2011. Again, the slips themselves do not indicate what products were sold, but Ms. del Campo made handwritten notes of the products purportedly represented by each slip.

(3) Invoices

At the October 13, 2011, hearing before the HCADB, Ms. del Campo submitted seven invoices from September 12, 2011, to October 12, 2011. Those invoices, which reflect sales of agricultural products, total $1,105.45. (Ex. 11.)

On December 19, 2012, Ms. del Campo submitted to the OAL six more invoices reflecting agricultural product sales. However, only one of the invoices is dated (September 3, 2011). That invoice is in the amount of $155.35. (Ex. G.)

On January 15, 2013, Ms. del Campo provided more invoices in response to an OAL request for more proof of income from 2011. Ms. del Campo provided invoices from June 14, 2011, to November 9, 2011, that total $3,040.66.

Thus, while the 2011 Schedule F, the bank statement, and the handwritten notes next to the copies of the deposit slips do not provide clear evidence of sales of agricultural products, Ms. del Campo has provided, through invoices, clear evidence that she sold $3,040.66 of agricultural products before the HCADB heard her application on November 10, 2011. The clear evidence is the properly dated invoices that show the agricultural products sold by Stonybrook Meadows in the year prior to the HCADB's commercial farm certification. The HCADB certified Stonybrook Meadows conditionally on October 13, 2011. The board did not hold a public hearing on the application until November 10, 2011. It was in advance of that hearing that Ms. del Campo satisfied the conditions set by the board by submitting her 2011 Schedule F and most recent farmland assessment form. While it appears that the board did not review any invoices after October 13, 2011, Ms. del Campo provided to OAL several invoices executed between October 13, 2011, and November 10, 2011. Those invoices, which reflect the sale of agricultural products, total $880.25. When added to the other clear proof of income, Ms. del Campo has shown that Stonybrook Meadows sold $3,040.66 in agricultural products in the year prior to final commercial farm certification by the HCADB on November 10, 2011. See del Campo Brief, January 15, 2013 (products sold between June 14, 2011, and November 9, 2011). Thus, the HCADB had jurisdiction to hear Ms. del Campo's SSAMP application in light of the income requirements.

**b) Stonybrook Meadows qualifies for differential property taxation under the FAA.**

The Feinbergs do not dispute that Stonybrook Meadows was farmland assessed at the time of the SSAMP application.

## II. Ms. del Campo has failed to show that agriculture is a permitted use on Stonybrook Meadows.

In addition to satisfying the income and farmland assessment requirements of the RTFA, a commercial farm must be (1) "located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan" or (2) in operation as of July 2, 1998, and in conformity with recommended agricultural management practices and all relevant state and federal statutes and regulations, and pose no direct threat to public health and safety. N.J.S.A. 4:1C-9. Here, Ms. del Campo has failed to raise a genuine issue of material fact that the activities she wished to conduct on Stonybrook Meadows did not need conditional use approval from East Amwell Township and thus were permitted uses under the municipal ordinance.

The Feinbergs argue that a conditional use, even one with all conditions satisfied, can never be or become a permitted use, and that because agriculture is not a permitted use in the zone where Stonybrook Meadows is located, Stonybrook Meadows is not entitled to protection under the RTFA. Under the Municipal Land Use Law (hereinafter MLUL), N.J.S.A. 40:55D-1 to -163, a conditional use is "a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board." N.J.S.A. 40:55D-3. A municipality may enact "[a] zoning ordinance [that] provide[s] for conditional uses to be granted by the planning board according to definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent." N.J.S.A. 40:55D-67(a); see also, Coventry Square, Inc. v. Westwood Zoning

Bd. of Adjustment, 138 N.J. 285, 294 (1994) (noting "MLUL's recognition that a fully complying conditional use is essentially equivalent to a permitted use").

In Tavalario, supra, the SADC found that the landowner's agricultural operation was not a permitted use as of the end of 1997. As the SADC explained, "agriculture was not a permitted use on the Property in 1997 without a conditional use approval and Mr. Tavalario did not have such approval." Id. at 10. Thus, the SADC determined that agriculture would have been a permitted use on Mr. Tavalario's property if he had met the necessary conditions and obtained the requisite approval.[11]

In the district in which Stonybrook Meadows is located, agriculture is a conditional use. The parties agree that Stonybrook Meadows has been a part of the Sourland Mountain District since 2003. The parties also agree that Stonybrook Meadows first qualified for farmland assessment in 2001 and has qualified for farmland assessment in each year since. The zoning provision for the Sourland Mountain District, § 92-89, provides that

> D. Conditional uses shall be as follows:
>
> (4) Agricultural uses and farms, including all farm and agricultural activities, such as nurseries, small animal and livestock raising . . .
>
> [Ex. 16.]

However, the provision creates an exemption for certain land within the district:

> [a] farm having farmland assessment as of December 11, 2003, and consisting of cropland harvested and/or cropland pastured and/or permanent pasture as documented on a properly filed FA-I farmland assessment application, need not apply for conditional use approval, provided such use does not involve any additional clearing and does not

[11] In affirming the SADC's decision, the Appellate Division stated, "[b]ecause the zoning of Tavalario's property was amended to 'A' Residence in 1995 under an ordinance that denominated agriculture as a 'conditional' not a 'permitted' use, he could not comply with the first portion of the statute's qualification provision." Tavalario, supra, 386 N.J. Super. at 444. The court's framing of the issue is a little different from the SADC's, and seems to imply that conditional uses can never be considered permitted uses. However, without more, it is mere conjecture that the Appellate Division so held, and the SADC provided a reasonable and fuller interpretation of the relationship between conditional and permitted uses.

> exceed the maximum lot coverage as permitted according to § 92-89F."
>
> [Ex. 16 (§ 92-89(D)(4)(b).]

Thus, agriculture could be a permitted use within the Sourland Mountain District, and not require conditional use approval, so long as an existing farm does not conduct activities that "involve any additional clearing and does not exceed the maximum lot coverage." If a conditional use is "a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board," then it follows that a conditional use that does not need conditional use approval is a permitted use.

In response to Ms. del Campo's 2005 application before the HCADB, Ms. McGee, then East Amwell Township's Planning Board Administrator, wrote in a letter to the HCADB that East Amwell Township adopted an ordinance amendment with respect to the Sourland Mountain in September 2004 that "grandfathered existing farms, so the conditional use approval is not an issue, as there will be no clearing of trees as part of [Ms. del Campo's] application." (Ex. 33.) Here, however, Ms. del Campo has not shown, nor provided any proofs, that she did not need conditional use approval to conduct the activities associated with her September 14, 2011, application. In particular, Ms. del Campo has not shown or proven that she did not need conditional use approval because her agricultural activities did not involve any additional clearing and did not exceed the maximum lot coverage under the municipal ordinance. McGee's letter from the prior 2005 application should not have been acceptable, and in any event, McGee's authority as an Administrator, to bind the East Amwell Township Planning Board, Zoning Board or Zoning Officer is questionable at best. Ms. del Campo has also not shown that Stonybrook Meadows was otherwise located in a district in which agriculture was a permitted use as of December 31, 1997, or thereafter.

In its resolution approving in part Ms. del Campo's September 14, 2011, application, the HCADB stated:

> A conditional use is, on its face, a permitted use, so long as the conditions are clearly set forth in the zoning ordinance. In this matter, proof has not been provided to the Board to demonstrate that Stonybrook Meadows received conditional use approval/authorization from East Amwell Township. However, in the absence of a written determination granting such conditional use approval, Ms. del Campo testified that Stonybrook Meadows, has, over the years, received multiple permits from the Township on separate occasions for her agriculture and farm related activities on the farm, including permits for her greenhouse. Therefore, the Board has concluded that municipal approval was impliedly granted based on the municipality's repeated practice of issuing permits for her farming operation.
>
> [HCADB Resolution, p. 13.]

Therefore, the HCADB agreed that Ms. del Campo had failed to demonstrate that Stonybrook Meadows had received conditional use approval from East Amwell Township. Ms. del Campo's testimony that she received multiple permits from East Amwell Township should not have been sufficient for the HCADB to determine that it had jurisdiction to hear the matter. Such approval by implication is insufficient. What was required was a showing that Ms. del Campo did not need conditional use approval from East Amwell Township, or that she had received conditional use approval. Neither was provided to the HCADB.

On appeal before this tribunal, and as part of this motion for summary decision, Ms. del Campo was requested to provide such proofs. She was unable to provide the necessary proofs, and requested assistance from East Amwell Township. East Amwell Township, in a letter provided by Richard P. Cushing, Esq., dated May 20, 2013, also could not provide the necessary proofs. An interpretation of the East Amwell Township zoning ordinance would have to first be made by the East Amwell Township Zoning Officer, and if appealed, by the East Amwell Township Zoning Board. This tribunal cannot act in the place of East Amwell Township, or in place of East Amwell's Planning Board, Zoning Board, or Zoning Officer, and make such a determination. As such, in the absence of the necessary proof from Ms. del Campo that she had previously received conditional use approval, or that she did not need conditional use approval

from the municipality, I cannot find that she met the RTFA eligibility requirement that agriculture is a permitted use on Stonybrook Meadows. Ms. del Campo has failed to raise any issue of material fact necessary to defeat the application of the Feinbergs for summary decision on this jurisdictional question.

I further find, however, that there is no evidence that agriculture in the Sourland Mountain District is not consistent with the master plan. According to the East Amwell Township Master Plan adopted on November 30, 2005, "[d]ue to the natural limitations of [the Sourland Mountain District] and a desire to promote a sustainable human and wildlife habitat, minimum design standards and criteria are intended to protect natural and cultural resources and preserve the rural character of the Sourland Mountain." Id. at 3. The municipal zoning ordinance allows agriculture if certain conditions are met. These conditions are presumptively designed to assure that agriculture does not cause harm to the Sourland Mountain District. Thus, conditional agricultural use in the Sourland District is consistent with the master plan.

## III. Stonybrook Meadows was not a commercial farm in operation as of July 2, 1998, because it did not qualify as a commercial farm then.

Since Ms. del Campo cannot meet the permitted use requirement, the only other way in which the HCADB could be found to have jurisdiction is if Stonybrook Meadows was a commercial farm as of July 2, 1998. However, Stonybrook Meadows was not a commercial farm in 1998 because the farm did not produce $2,500 worth of agricultural products and was not eligible for farmland assessment. By Ms. del Campo's own admission, she produced only $1,610 of agricultural products in 1998 and was not eligible for farmland assessment until 2001. (Ex. E.) Thus, the farm cannot qualify for protection under the RTFA since it was not in operation as a commercial farm by July 2, 1998.

## IV. The relevant parties received adequate notice of the HCADB hearing on November 10, 2011.

The RTFA and its regulations do not provide much guidance on proper notice with regard to requests for SSAMP recommendations. Under N.J.A.C. 2:76-2.3(c), a CADB "shall advise the [SADC] and the municipality(ies) in which the commercial farm

is located, in writing, of the receipt and nature of the request within 10 days." And, while the RTFA and its regulations do not mention notice to affected neighbors of the commercial farm, the Appellate Division recently remarked, in dicta, on the importance of notifying adjacent property owners. According to the court in Curzi v. Raub, 415 N.J. Super. 1, 23 (App. Div. 2012), a county board must provide notice to affected property owners when a farmer applies for an SSAMP recommendation, and the failure to do so, "describing with particularity the subject of the application and the consequences of the determination to be made, may deprive the determination of its binding effect on those individuals."[12] Ibid.

Here, the HCADB has promulgated its own rules regarding notice in the event of an SSAMP recommendation request. (Ex. 50.) If a public hearing on the request is scheduled, "[t]he applicant must serve public notice to landowners within 200 feet of the boundaries of the farm, the municipality, municipal planning board, and all parties involved in the application at least 10 days prior to the hearing." Ibid. The HCADB's rules also state that "[p]roof of notification will be required prior to hearing." Ibid.

On October 27, 2011, Ms. del Campo first placed a notice of the November 10, 2011, hearing in the Hunterdon County Democrat, a local newspaper, and on October 31, 2011, she notified by certified mail her neighbors within 200 feet, Comcast, Jersey Central Power & Light, PSE&G, the Hunterdon County Planning Board, and the New Jersey Department of Transportation. See del Campo Brief, February 2, 2013.

While the mailbox for Stonybrook Meadows is located in Hopewell Township, Mercer County, the farm itself is located in East Amwell Township, Hunterdon County. Since the farm itself is located in East Amwell Township, there is no requirement that Ms. del Campo or the HCADB had to provide notice of the hearing to officials in Hopewell Township or Mercer County.

As such, Ms. del Campo provided sufficient notice to all relevant parties.

[12] In a footnote, the court stated, "[t]he issue is not squarely presented and we do not decide in this case whether personal notice is required in circumstances such as these, or whether published notice is adequate." Ibid. at n. 3.

## CONCLUSION

Based on the foregoing, the Feinbergs' motion for summary decision based on a lack of jurisdiction is **GRANTED**. The HCADB did not have jurisdiction to hear Ms. del Campo's application because she has not shown that agriculture is a permitted use and because Stonybrook Meadows was not a commercial farm in operation as of July 2, 1998.

## ORDER

I **ORDER** that the Feinberg's motion for summary decision be **GRANTED**.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Edward J Delanoy Jr

June 19, 2013
DATE

**EDWARD J. DELANOY, JR.,** ALJ

Date Received at Agency:

Date Mailed to Parties:

EJD/cb